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January 16, 1998

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Dear Ms. Salas

On behalf of Tichenor License Corporation, there are herewith submitted an original and four(4) copies of its Motion For Resolution of Rulemaking Proceedings in MM Docket 95-49 (RM-8558).

Please direct any inquiries regarding this matter to the undersigned counsel at the new address indicated above.

Sincerely

  
Lawrence N. Cohn

Enclosure

cc: All counsel on Certificate of Service w/encl.

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BEFORE THE

**Federal Communications Commission**

In the Matter of )  
 )  
 Amendment of Section 73.202(b) )  
 Table of Allotments, )  
 FM Broadcast Stations )  
 (Llano and Marble Falls, Texas) )

MM Docket No. 95-49  
 RM-8558

**RECEIVED**

JAN 16 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch

**MOTION FOR RESOLUTION OF RULEMAKING PROCEEDINGS**

Tichenor License Corporation ("TLC"), licensee of Stations KLTO(FM), Rosenberg, Texas, and KLTP(FM), Galveston, Texas, by its counsel, pursuant to 47 CFR Section 1.429(g), respectfully submits this Motion for Resolution of Rulemaking Proceedings (hereinafter "Motion").

**I. Background/Summary**

At present this matter is pending before the Allocations Branch (the "Branch") on reconsideration of its Report & Order, Llano and Marble Falls, Texas, 12 FCC Rcd 6809 (1997) ("Report & Order"). The purpose of this Motion is to present a solution which resolves this proceeding in a manner which meets the needs of all the parties who filed comments in the proceeding as well as the parties which filed construction permit applications in reliance on the

allotment of Channel 242A at Llano, Texas, as provided in the Report & Order.

The underlying dispute in this proceeding concerns the allotment of Channel 242. The Report & Order allotted Channel 242A to Llano as requested by Maxagrid Broadcasting Corporation ("Maxagrid"), and rejected the conflicting counterproposal of TLC and Roy E. Henderson ("Henderson") to allot Channel 242C2 to Menard, Texas. However, as the Commission expressly recognized in the Report & Order, there are other FM channels (in addition to Channel 242A) which can be allotted to Llano, thus eliminating the need to for the Commission to choose between the conflicting proposals. The global resolution presented here (which includes the allotment of Channels 271A, 275A, and 293A to Llano, and the allotment of Channel 242C2 to Menard) will not only afford each party to this proceeding the opportunity to obtain the class of FM facilities said party has requested from the Commission, it will (among other benefits) serve the public interest by resolving this litigation (thereby conserving the Commission's scarce resources), and expediting the establishment of FM stations in two significant communities which currently have no stations.

## II. Discussion

### A. The Rulemaking Proceedings

#### 1. Llano and Marble Falls, Texas--RM-8558

In the Report & Order, the Branch adopted the proposal advanced by Maxagrid, licensee of Station KBAE (Channel 284C3) at Llano, Texas. Specifically, it substituted Channel 285C3 for Channel 284C3 at Llano, reallocated Channel 285C3 to Marble Falls, Texas, and modified the license of Station KBAE to specify operation on Channel 285C3 at Marble Falls. Report and Order, 12 FCC Rcd at 6813, ¶ 9(c). The Report & Order dismissed the counterproposal filed by Henderson (formerly the licensee of Station KLTO(FM), Rosenberg, Texas <sup>1/</sup>) and TLC involving the communities of Menard, Galveston, Rosenberg and Missouri City, Texas. Id., ¶ 12. The TLC/Henderson counterproposal sought the deletion of FM Channel 285A at Rosenberg, and the allotment of Channel 285C3 to Missouri City. To accomplish this result, the counterproposal also proposed the deletion of Channel 285A at Galveston (used by TLC's Station KLTP(FM)), the modification of Channel 285A to Channel 242C2, and the reallocation of Channel 242C2 to Menard. The Commission found the TLC/Henderson counterproposal to be mutually exclusive with the Maxagrid proposal by virtue of the conflict between the use of Channel 242C2 at Menard as proposed by TLC/Henderson and the use of

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<sup>1/</sup> On September 22, 1997, Henderson assigned the license to operate Station KLTO(FM) to TLC pursuant to prior Commission approval (BALH-970424GE).

Channel 242A at Llano as proposed by Maxagrid. Report and Order, 12 FCC Rcd at 6811, ¶4.<sup>2/</sup>

Because the Branch did not want to deprive Llano of the service from its only broadcast outlet, the Report & Order made the allotment of Channel 285C3 to Marble Falls, as proposed by Maxagrid, contingent upon its filing for and obtaining a construction permit for Channel 242A at Llano and the institution of service. Report & Order, 12 FCC Rcd at 6813, ¶ 9(c). In anticipation of the possibility that conflicting applications might be filed for Channel 242A at Llano, thereby causing a significant disruption of local service, the Commission considered the availability of alternative channels, and determined that Channels 271A, 273A, and 275A could also be allotted to Llano if this was needed to assure continuation of service to Llano. Report & Order, 12 FCC Rcd at 6812, ¶ 7.

The Report & Order established August 14, 1997, as the termination of the filing "window" for Channel 242A at Llano. Report & Order, 12 FCC Rcd at 6814, ¶ 13. Three applicants filed applications for the new FM station on Channel 242A at Llano. They were the

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<sup>2/</sup> Although the Commission found the TLC/Henderson counterproposal to be mutually exclusive with the Maxagrid proposal, it did not accept the counterproposal because, it concluded, TLC's commitment to apply for Channel 242C2 as a new allotment did not indicate with sufficient clarity that TLC's commitment was unconditional--i.e., that it would be subject to the filing of competing applications. Id. TLC subsequently restated its commitment as unequivocally opening up Channel 242C2 at Menard for competing applications. See, Joint Petition for Reconsideration, p. 6, ¶ 15.

following: Elgin FM Limited Partnership ("Elgin") (BPH-970814MI), BK Radio ("BK Radio") (BPH-970815MD), and Maxagrid (BPH-970815ME).

2. Recent Request for Issuance of NPRM

On October 8, 1997, Elgin (one of the applicants for Channel 242A at Llano) filed a Petition for Rulemaking wherein it commented that other FM channels are available for allotment to Llano. Elgin requested that it be given Channel 293A (with cut-off protection). It also requested that BK Radio be assigned Channel 275A (with cut-off protection), thus leaving Channel 242A available for use by Maxagrid. Elgin also noted that Channels 271A and 273A remain available for use at Llano. Elgin's Petition is currently pending.

B. Resolution of the Rulemaking Proceedings

The Commission has long looked with favor upon proposals that resolve mutually exclusive proceedings in several related rulemaking proceedings. See, Columbia and Dothan, Alabama, Graceville, et al., 8 FCC Rcd 4496 (1993). In the present case, the interests of all the parties can be accommodated in a manner that will avoid protracted litigation, bring new and enhanced service to the communities involved, and further serve the public interest by conserving the Commission's resources.

Since there are three parties interested in establishing Class A FM service in Llano (i.e., Maxagrid, BK Radio, and Elgin), and there are three Class A channels simultaneously available in Llano in addition to Channel 242A (i.e., Channels 271A, 275A, and 293A <sup>3/</sup>), there is no technical difficulty in satisfying the requests of all the parties interested in serving Llano. For example, Elgin might be assigned 293A in accordance with the preference expressed in its recent Petition, and Maxagrid and BK Radio might each be assigned one of Channels 271A or 275A (with cut-off protection).

This approach would be proper because the Commission has the authority to allot a channel different from the one specified in an NPRM and without giving prior public notice. Coos Bay, Oregon, 8 FCC Rcd 7088 (1993). In similar cases, the Commission has allowed mutually exclusive applicants to be assigned equivalent channels with cut-off protection. Laramie, Wyoming, 11 FCC Rcd 21527 (1996); Negaunee, Michigan, 11 FCC Rcd 16270 (1996); Casper, Wyoming, 11 FCC Rcd 1071 (1996); Cheyenne & Saratoga, Wyoming, 11 FCC Rcd 1073 (1995), Albion, Nebraska, 10 FCC Rcd 3183 (1995); rev. denied, 10 FCC Rcd 11931 (1995).

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<sup>3/</sup> The allocation of Channel 273A at Llano would preclude the allocation of Channel 271A or 275A.

With the Llano situation resolved in the foregoing manner, Maxagrid may proceed with the use of Channel 285C3 at Marble Falls, as contemplated in the Report & Order.<sup>4/</sup>

The allocation of three other available FM Channels to Llano (rather than Channel 242A as contemplated by the Report & Order) would allow the implementation of the TLC counterproposal. Specifically, TLC's Station KLTP on Channel 285A in Galveston, which is currently short-spaced to TLC's station KLTO on Channel 285A at Rosenberg, Texas, could be deleted and reallocated as Channel 242C2 at Menard, Texas. This would provide the first local broadcast station in Menard (1990 US population of 1,608). TLC reiterates its firm commitment to file an application to use Channel 242C2 at Menard for its Station KLTP(FM), now in Galveston, and to run the risk that opposing competing applications may be filed in conflict with said Menard application. See, Joint Petition for Reconsideration, ¶ 15.

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<sup>4/</sup> On August 8, 1997, the Commission released a Notice of Proposed Rulemaking seeking comments on a proposal filed by North Texas Broadcasting requesting the allotment of Channel 285C3 to Hamilton, Texas (RM-9146). In a counterproposal filed with the Commission on September 29, 1997, Maxagrid sought to upgrade Station KBAE from the Channel 285C3 Marble Falls facility which it seek in the instant proceeding to Channel 285C2 at Marble Falls. TLC takes no position on whether Maxagrid should be allotted Channel 285C2. It notes, however, that using reference coordinates slightly northwest of those contained in the Maxagrid counterproposal, its new requested facility would provide a city grade signal to both Llano and Marble Falls. See Engineering Statement. Also, the new Maxagrid proposal might have been accomplished as a one-step upgrade at Llano. Id. In any event, it is clear that this proceeding can be resolved and Maxagrid's interest as expressed in this proceeding can be accommodated using its original proposal for Station KBAE on Channel 285C3 at Marble Falls.

TLC's Station KLTO on Channel 285A at Rosenberg, which is currently short-spaced to a station on Channel 285A in La Grange, would be upgraded to Channel 285C3 and reallocated to Missouri City, Texas. This would provide a first local broadcast station in Missouri City (1990 US population of 36,176). Since the assignment of Channel 285C3 to Missouri City can not be made without the deletion of Channel 285A as presently utilized by Station KLTO(FM) at Rosenberg, the allotment of Channel 285C3 to Missouri City, and its use by Station KLTO, would not be subject to competing applications.

Several important public interest benefits will be realized as the result of the above conflict resolution plan:

- protracted litigation will be avoided;
- two additional FM services will be immediately established at Llano, Texas;
- Menard, Texas (1990 population 1,609) will get its first local aural service;
- Missouri City, Texas (1990 population 36,176) will get its first local aural service;
- both Marble Falls and Llano will enjoy increased service from Station KBAE(FM).
- current short-spacings of Stations KLTO and KLTP will be eliminated.

As explained in the TLC/Henderson Comments and Counterproposal filed with the Commission on September 23, 1996 (see pp.2-6 and Engineering Statement of F.W. Hannel), the foregoing public interest benefits far outweigh the loss of FM service at Rosenberg

(which would retain a full-time AM station--KRTX, licensed to TLC) and Galveston (which would retain one FM and two full-time AM stations).

If the Commission determines that by allotting certain available channels all interests can be accommodated, it is unnecessary to issue further notices in a proceeding. Churubusco, Indiana, et al., 5 FCC Rcd 916 (1990). In the present case, TLC has shown that all interests can and should be resolved in a manner that accommodates all the parties. The chart below summarizes these interests and their resolution:

<u>Party</u>	<u>Community</u>	<u>Channel Requested</u>	<u>Resolution</u>
Elgin	Llano	Channel 242A	Assign Channel 293A
BK Radio	Llano	Channel 242A	Assign Channel 271A or 275A
Maxagrid	Llano	Channel 242A	Assign Channel 271A or 275A
Maxagrid	Marble Falls	Channel 285C3	Assign Channel 285C3 <sup>5/</sup>
TLC	Menard	Channel 242C2	Assign Channel 242C2
TLC	Missouri City	Channel 285C3	Assign Channel 283C3

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<sup>5/</sup> However, see page 7, note 4, above regarding the possibility of a one-step upgrade from Channel 285C3 to Channel 285C2.

Conclusion

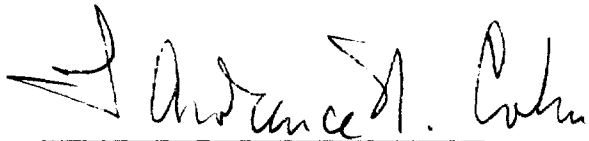
For the reasons set forth above, TLC requests that the Commission modify the FM Table of Allotments (Section 73.202(b) of the Rules) as follows:

<u>Community</u>	<u>Present Channel</u>	<u>Proposed Channel</u>
Llano, TX	242A <sup>5/</sup>	271A, 275A, 293A
Marble Falls, TX	285C3	285C3
Menard, TX	-----	242C2
Missouri City, TX	-----	285C3
Galveston, TX	285A, 293C	293C
Rosenberg, TX	285A	-----

Respectfully submitted,

TICHENOR LICENSE CORPORATION

By:

  
\_\_\_\_\_  
Roy R. Russo  
Lawrence N. Cohn  
Its Attorneys

Cohn and Marks  
1920 N Street, NW  
Suite 300  
Washington, DC 20036  
202/293-3860

Date: January 16, 1998

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<sup>5/</sup> See the FM Table of Allotments, as modified by the Report & Order.

CERTIFICATE OF SERVICE

I, Michelle A. Bundy, do hereby certify that copies of the foregoing Motion for Resolution of Rulemaking Proceedings have been served by United States mail, postage prepaid on this 16th day of January, 1998 upon the following:

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Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications  
Commission  
2025 M Street, NW  
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\*Ms. Pam Blumenthal  
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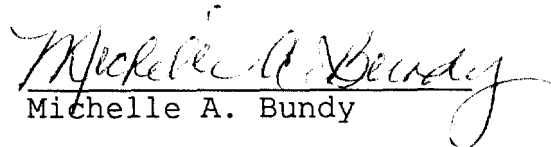
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Michelle A. Bundy

\*Hand Delivered

Tichenor License Corporation

**Engineering Statement**  
Radio Station KLTO(FM)  
Rosenberg, Texas

MM Docket 95-49

(c) 1998

F. W. Hannel, PE  
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STATE OF ILLINOIS            )  
                                  )       SS:  
COUNTY OF PEORIA            )

F. W. Hannel, after being duly sworn upon oath,  
deposes and states:

He is a registered Professional Engineer, by  
examination, in the State of Illinois;

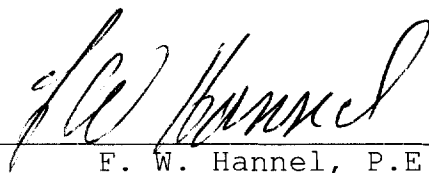
He is a graduate Electrical Engineer, holding Bachelor  
of Science and Master of Science degrees, both in Electrical  
Engineering;

His qualifications are a matter of public record and  
have been accepted in prior filings and appearances requiring  
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him  
personally or under his supervision and direction and;

The facts stated herein are true, correct, and  
complete to the best of his knowledge and belief.

January 13, 1998

  
\_\_\_\_\_  
F. W. Hannel, P.E.

F. W. Hannel, PE  
911 Edward Street  
Henry, Illinois 61537  
(309) 364-3903  
Fax (309) 364-3775

## **ENGINEERING STATEMENT**

This firm has been retained by Tichenor License Corporation, licensee of Radio Station KLTO(FM), Rosenberg, Texas, to prepare this Engineering Statement in support of its Motion For Resolution of Rulemaking Proceedings in MM Docket 95-49. This Rulemaking is presently pending before the Commission, and this Engineering Statement shows a technical procedure that can be utilized to resolve all conflicts in the proceeding.

The only real dispute in this proceeding relates to the proposed assignment of FM Channel 242A to Llano or the assignment of FM Channel 242C2 to Menard, Texas, which are in conflict with each other. The remaining portions of the Docket are not in conflict and are unaffected by this proposed Resolution. At the present time there are 3 applicants that have applications on file for the use of FM Channel 242A at Llano, Texas and one of those applicants has filed a rulemaking proposal seeking the assignment of additional channels to Llano which would afford each applicant a channel. This proposed Resolution provides all applicants for at Llano a Class A channel assignment, while simultaneously setting all disputes in the Docket. Adoption of this technical solution will remove all remaining conflicts in the proceeding and provide all parties with their requested channels.

Insofar as there would be no competition for a channel assignment to any community involved in this proceeding and no applicant or petitioner receives anything less than requested in their respective proposals, there are no disputes to be settled. The Commission has to simply adopt this proposal and the entire Docket is settled.

Specifically, it is requested that the Commission make the following changes in the FM Table of Allotments:

City	Present Channel	Proposed Channel
Llano, TX	242A	271A, 275A, 293A
Marble Falls, TX	285C3	285C3 <sup>1</sup>
Menard, TX	----	242C2
Missouri City, TX	----	285C3
Galveston, TX	285A, 293C	293C
Rosenberg, TX	285A	---- <sup>2</sup>

The community of Llano, Texas, is located at US Atlas co-ordinates N30-45-00, W98-40-36. The assignment of FM Channel 271A to that community can be made utilizing reference co-ordinates N30-43-09, W98-46-28. The reference site for the assignment of FM Channel 271A at Llano is 10 km southwest of the community, and a transmitter operating from this theoretical site will illuminate the community with the required city grade signal as well as meet all of the Commission's channel spacing requirements. Attached as Exhibit E-1 is an FM Channel study conducted from this sample site.

The assignment of FM Channel 275A can be made to the city of Llano, Texas, utilizing reference co-ordinates N30-42-20, W98-46-29. This sample site is 10.6 km southwest of Llano, and a transmitter operating from this theoretical site will fully satisfy

<sup>1</sup> Maxigrid has a proposal pending in another proceeding requesting the assignment of FM Channel 285C2 to Marble Falls, Texas, as a replacement channel for FM Channel 285C3. With the site restriction requested by Maxigrid in that proceeding, the assignment of FM Channel 285C2 to Marble Falls would provide city grade coverage to Llano with a slight revision in reference co-ordinates.

<sup>2</sup> Rosenberg will retain service from Radio Station KRTX(AM) licensed to that community.

the Commission's city grade illumination and channel separation requirements, as is more clearly demonstrated by the attached Exhibit E-2.

The Commission has already reserved FM Channel 293A for assignment at Llano, Texas, utilizing the city reference co-ordinates, therefore, no channel study is being submitted for that proposed assignment.

From the foregoing, it can be seen that this complete docket can be settled by the adoption of the changes proposed in this conflict resolution proposal. The proposal provides all parties with channels, no community is deprived of service, and two communities are provided with a first local service. Adoption of the proposal is clearly in the public interest.

Tichenor License Corporation

**Engineering Statement**  
Radio Station KLTO(FM)  
Rosenberg, Texas

MM Docket 95-49  
FM Channel 271A Study  
N30-43-09 W98-46-28  
EXHIBIT E-1

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Brownwood	TX	268	C1	U	114.4	75.0	348.2°	39.4
KOXE	Brownwood	TX	268	C1	L	114.4	75.0	348.2°	39.4
ALC	San Antonio	TX	270	C1	U	146.8	133.0	169.0°	13.8
KACQ	Lometa	TX	270	A	L	72.4	72.0	36.7°	0.4
KQXT	San Antonio	TX	270	C1	L	133.3	133.0	173.5°	0.3
KQXT	San Antonio	TX	270	C1	L	146.8	133.0	169.0°	13.8
ALC	Austin	TX	272	C2	U	107.1	106.0	122.6°	1.1
KPEZ	Austin	TX	272	C2	L	106.3	106.0	121.2°	0.3

Tichenor License Corporation

**Engineering Statement**  
Radio Station KLTO(FM)  
Rosenberg, Texas

MM Docket 95-49  
FM Channel 275A Study  
N30-42-20 W98-46-29  
EXHIBIT E-2

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	San Antonio	TX	274	C1	U	145.3	133.0	168.9°	12.3
KTFM	San Antonio	TX	274	C1	L	145.3	133.0	168.9°	12.3
ALC	Bandera	TX	276	A	A	98.9	72.0	197.9°	26.9
KOOV	Copperas Cove	TX	276	C3	L	89.2	89.0	61.9°	0.2
ALC	San Marcos	TX	278	C	U	112.9	95.0	130.4°	17.9
KEYIFM	San Marcos	TX	278	C	L	112.9	95.0	130.4°	17.9